



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 31824044

Date: AUG. 9, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish the Petitioner met the initial evidence requirements for the classification by establishing his receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation; who seek to enter the United States to continue work in the area of extraordinary ability; and whose entry into the United States will substantially benefit prospectively the United States. The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement, that is, a major, internationally recognized award. If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles.

Where a petitioner meets the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner stated that he accomplished numerous achievements in his field of expertise which have been recognized on both a national and international level. Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have satisfied eight of these criteria, summarized below:

- (i), documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- (ii) membership in associations that require outstanding achievements
- (iii), published material about the individual in professional or major media
- (v), original contributions of major significance
- (vi), authorship of scholarly articles
- (vii), display of his work in the field at artistic exhibitions or showcases
- (viii), evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation
- (ix), high remuneration for services

The Director concluded the Petitioner met one criterion pertaining to the display of his work which we will not disturb. On appeal, the Petitioner asserts that his evidence satisfies the applicable legal requirements to satisfy the other claimed criteria. For the reasons discussed below, we agree with the Director that the Petitioner has not satisfied the other claimed criteria.

A. Evidentiary Criteria

Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

In order to satisfy this criterion, the Petitioner must demonstrate that he has received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.¹ Relevant considerations regarding whether the basis for granting the prizes or awards was for excellence in the

¹ See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

field include, but are not limited to: the criteria used to grant the awards or prizes, the national or international significance of the awards or prizes in the field, and the number of awardees or prize recipients as well as any limitations on competitors.²

The Director determined that the Petitioner did not establish that any of the awards qualify as nationally or internationally recognized prizes or awards for excellence in the field. We agree with that determination.

On appeal, the Petitioner reiterates that he was awarded first place in the selection process for a substitute professor position at the public university and a first-place designation for his master's degree in civil engineering. The Petitioner did not submit sufficient evidence to establish that these achievements constitute prizes or awards, rather than professional credentials. Regarding the selection process for a position as a substitute professor, the Petitioner states on appeal that the selection process at public universities in Brazil involve a "comprehensive and competitive process that aims to identify individuals with exceptional qualifications in their particular fields," and is open to all Brazilians and resident immigrants. The Petitioner further explains that the selection process is published in the official gazette of the federal government or state government, and states that the selection process will include the judgement of titles and taking tests, and then a selection committee "assesses every facet of candidates' performance across various stages of the process." On appeal, the Petitioner submits copies of the job vacancy announcements posted in the newspaper.

However, the record does not contain sufficient information or evidence to support the Petitioner's claim that his selection for the position as a substitute professor should be considered a nationally or internationally award for excellence in his field. The Petitioner does not sufficiently explain how this selection process is an award rather than a job opening advertisement that requires a person to hold certain qualifications to fill the position. Even if being selected to fill a job vacancy could be considered a prize or award, which in this case it does not, the Petitioner did not provide sufficient documentation regarding the individuals who determine who is selected for the substitute teacher position, and the record does not contain official results or other evidence demonstrating the number of individuals who applied for the substitute teacher position, and the level of recognition associated with this alleged award. On appeal, the Petitioner claims that the substitute teacher position is nationally recognized because the job vacancy is posted in the "official gazette" and open to all nationals and residents, but the record lacks sufficient evidence verifying that this job position is a nationally or internationally recognized award for excellence in the field, or evidence that the Petitioner himself received any recognition from outside the issuing organization.

The Petitioner also asserts that he received first place designation for his master's degree obtained at a public university that follows a similar public selection process as noted above. The Petitioner asserts that he went through the selection process with national applicants and therefore this award represents a nationally recognized prize or award for excellence. The petitioner did not provide sufficient evidence regarding the rules and selection process for granting the first-place designation for a master's degree, official results for the entire competition, the number of competitors and winners in each age and category, or other evidence related to the specific category in which he received this

² *Id.* (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance.)

designation. Further, the Petitioner did not provide sufficient evidence to determine that the Petitioner's first place designation is a nationally or internationally recognized prize or award for excellence in his field.

On appeal, the Petitioner reiterates he received awards when the thesis he wrote in his bachelor's program was chosen as "best work" for that year, and when he was recognized as "best professor" from three different universities. However, the Petitioner did not provide sufficient information or documentation to overcome the Director's concerns regarding these recognitions and whether they in fact constitute a prize or award. Again, even if the Petitioner could satisfy the issue as to whether these acknowledgements are awards, he did not provide sufficient evidence regarding the rules and selection process for these recognitions, official results for the entire competition, the number of competitors, or whether these recognitions are nationally or internationally recognized prizes or awards for excellence in his field.

For the reasons stated above, the Petitioner does not meet this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner contends eligibility for this criterion based on his membership of the Federal Council of Architecture and Urbanism (CAU) and the state board of architecture and urbanism for the state of Minas Gerais, Brazil (CAU/MG). U.S. Citizenship and Immigration Services (USCIS) determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policymanual>. The Director determined that the Petitioner did not submit documentary evidence demonstrating that outstanding achievements are required for membership in this organization, or that it relies on recognized national or international experts to determine which individuals qualify for membership.

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that he is a member of an association in his field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

On appeal, the Petitioner contends that CAU is the "most prestigious and exclusive architectural organization in Brazil" and to qualify for a CAU license, a person must have a bachelor's degree in architecture and must comply with "bureaucratic requirements." The Director noted in his decision that it appears the Petitioner is a licensed professional of CAU but not an actual member. On appeal, the Petitioner did not provide documentation to show he is a member of CAU and did not submit information of the entry requirements to become a member. Further, the record does not show whether CAU requires outstanding achievements, as judged by recognized national or international experts, in order to become a member. It is insufficient to allege eligibility through conclusory assertions that are

not supported by sufficient evidence, which proves the allegation.³ The record does not contain sufficient documentary evidence to demonstrate the membership eligibility requirements for the claimed association, how members are selected, and whether membership was based on being judged by recognized national or international experts as having outstanding achievements in the field of protective services. Therefore, this criterion has not been met.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

To meet this criterion, the published material must be about the Petitioner and related to his specific work in the field for which classification is sought; it must include the title, date, and author of the material and any necessary translation; and the publication must qualify as a professional publication, major trade publication, or major media publication. 8 C.F.R. § 204.5(h)(3)(iii). With the petition, the Petitioner submitted online articles from various websites and publications. In his decision, the Director indicated that he reviewed the articles submitted and found that none of the articles met plain language requirements of the regulation since some articles were not fully translated into the English language, some lacked the URL address or the author, some articles were not about the Petitioner, and the Petitioner did not provide sufficient evidence to establish that the cited sources qualify as professional or major trade publications or other major media.

The Director's decision noted the material provided regarding the Petitioner's participation as a guest commentator of the *Radio Vivo Program* were given little probative value because the Petitioner did not provide a full transcript of the program. On appeal, the Petitioner states that the radio program could not provide a full transcript of the program but instead he provided a certificate attesting to his participation as a guest commentator. Further, he contends that even though the record lacks the full transcript, the titles of the radio programs are directly related to his work as a professor and researcher in architecture and civil engineering. Without a full transcript, it is impossible to determine the radio programs are about the Petitioner and related to his specific work. In addition, the Petitioner did not provide documentation to indicate this radio station qualifies as major media.

On appeal, the Petitioner states the articles posted on *bheventos.com.br* and *minasfazciencia.com.br* indicate the author's name and dates in the URL address. On appeal, the Petitioner provided print-out copies of google searches of the articles to indicate dates and author. The Petitioner also submits a letter from the "editor-chefe" of *Minas Faz Ciencia* noting that the magazine has a circulation of 25,000 copies per edition. The record does not provide sufficient evidence regarding the circulation statistics for both websites above and the significance of the statistics compared to other publications or elaborate on how that information could establish that the websites are the type of major media contemplated by 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner re-submits an article he authored that was published in *O Tempo*. However, the Petitioner did not present sufficient evidence to establish this online article was published in major

³ *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Fano v. O'Neill*, 806 F.2d 1262, 1266 (5th Cir. 1987); *1756, Inc. v. Att'y Gen*, 745 F. Supp. 9, 17 (D.D.C. 1990).

media. On appeal, the Petitioner re-submits a letter from the general writing coordinator at *O Tempo* who states that the specific article submitted by the Petitioner with this petition was published in the print newspaper with a circulation of 3,000 editions, and available in the online portal whereby the link received 7,523 accesses. However, the record does not contextualize this statistic, indicate its significance, or elaborate on how that information could establish that the website is the type of major media contemplated by 8 C.F.R. § 204.5(h)(3)(iii).

For the reasons stated above, the Petitioner does not meet this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The primary requirements here are that the Petitioner's contributions in their field were original and rise to the level of major significance in the field as a whole, rather than having major significance to a project or to an organization. *See Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022)(citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all these elements to meet the plain language requirements of this criterion.

The Petitioner claims to have made original contributions in the field of architecture and civil engineering and submitted a statement outlining his accomplishments in these areas, but the Petitioner's statements alone is not sufficient if not corroborated by independent evidence. In denying the petition, the Director determined that the testimonial evidence did not establish that he has made original contributions of major significance in the field. On appeal, the Petitioner also submits letters in support of this assertion.

Upon review of the record, the authors of the letters and articles submitted with the petition attest to the talent of the Petitioner, but do not provide specific examples of how the Petitioner's methods or techniques have influenced the work of other individuals in the field of teaching architecture and civil engineering, or otherwise equate to original contributions of major significance in the field. Also, the submitted documentation does not include an explanation as to how the Petitioner's choice of methods differs from that of other professors in the field of architecture and civil engineering. The plain language of this regulatory criterion requires that the Petitioner's contributions be "of major significance in the field" rather than limited to the person he teaches or mentors or personally purchases his art. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

While the Petitioner submits letters of support and articles discussing the Petitioner's work as original and inventive, it does not necessarily mean that his work as a professor in architecture and civil engineering significantly contributed to the field as a whole. *See generally* 6 USCIS Policy Manual, *supra*, F.2 (Appendices); *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a

ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole). Publications alone are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of major significance. The Petitioner did not establish that publication in a popular or highly ranked journal alone demonstrates a contribution of major significance in the field.

Even considering the Petitioner's appellate claims under this criterion, we still conclude he has not shown that his work has resulted in a marked impact within the field. In the end, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

To meet the plain language requirements of this criterion, a petitioner must establish that they have performed in either a leading or critical role, and that the role was for an organization or establishment (or a division or department of an organization or establishment) with a distinguished reputation. A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A title, with appropriate matching duties, can help establish whether a role is or was, in fact, leading. Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. *See generally* 6 *USCIS Policy Manual* F.2(B)(2)(Appendices), <https://www.uscis.gov/policymanual>. In addition, this criterion requires that the organization or establishment be recognized as having a distinguished reputation. USCIS policy reflects that organizations or establishments that enjoy a distinguished reputation are "marked by eminence, distinction, or excellence." *See generally id.* (citing to the definition of *distinguished*, *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/distinguished>). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Director's decision addressed the evidence previously submitted and determined that the Petitioner did not demonstrate he performed in a leading or critical role for organizations or establishments that have a distinguished reputation. On appeal, the Petitioner does not provide additional evidence to overcome the Director's decision and instead, contends throughout his career he performed a critical role as a professor teaching the next generation of architects and engineers. He also states his most relevant critical role as a professor was the "education of hundreds of architecture and civil engineering graduate and postgraduate students at five renowned universities in Brazil." In addition, he reiterates his selection as a reviewer for the National Association of Technology in the Built Environment (ENTAC) also reflects his position in a leading and critical role for a distinguished organization.

Upon review, we conclude that the Petitioner's brief consists of conclusory statements that do not meaningfully discuss the Director's specific reasoning. Instead, the Petitioner points to the same evidence already on record and does not specifically address the Director's grounds for denial. For these reasons, the Petitioner has not established that he meets this criterion.

B. Reserved Issues

As previously noted, the Petitioner also asserts that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(vi) and (ix), which relate to authorship of scholarly articles and high remuneration, respectively. Detailed discussion of the remaining claimed criterion at 8 C.F.R. § 204.5(h)(3)(vi) and (ix) cannot change the outcome of the appeal. Therefore, we reserve these issues and will not address these criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576-77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten lesser criteria. We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20, or render a determination on the issue of whether the Petitioner's entry will substantially benefit prospectively the United States. Accordingly, we reserve these issues.⁴

Nevertheless, we have reviewed the record in the aggregate and concluded that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Price*, 20 I&N Dec. at 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

⁴ *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.